IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.2030 of 1998

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BABUBHAI DAHYABHAI PATEL & 5 - Petitioner(s)
Versus
PRAVINCHANDRA UMIYASHANKAR YAGNIK & 2 - Respondent(s)

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Appearance :
MR GM JOSHI for Petitioner(s) : 1 - 6.
SERVED BY AFFIX.(N) for Respondent(s) : 1,
MS ARCHNA RAWAL, AGP for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 08/03/2007
ORAL JUDGMENT

(1) This petition has been filed praying for following reliefs:

"26. Petitioners therefore prays that:

A) This Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Direction or Order quashing and setting aside the proceedings of Application No:62 of 1997 pending before the Joint Charity Commissioner at Vadodara (at

Annexure “G”), application No:1 of 1998 filed by the Respondent No;1 before the Charity Commissioner of Ahmedabad (at Annexure “H), and Application No: J/5/98 pending before the Joint Charity Commissioner, Vadodara (at Annexure “I”), holding that the question is decided by three Authorities as well as at large before this Hon'ble Court in Spl. C.A. N:3940 of 1997 and 3941 of 1997 and therefore the whole proceedings are not tenable and therefore liable to be quashed and set aside.

B) Be pleased to pass such other and further orders as may deem just and proper in the facts and circumstances of the case.

C) Be pleased to award exemplary costs to the petitioner for having dragged in to such litigations.

D) Pending admission, hearing and final disposal of this petition, be pleased to STAY further proceedings of Application N: 62 of 1997 pending before the Joint Charity Commissioner at Vadodara (at Annexure “G”), application No:1 of 1998 filed by the Respondent No;1 before the Charity Commissioner at Ahmedabad (at Annexure “H”), and Application No: J/5/98 pending before the Joint Charity Commissioner, Vadodara (at Annexure “I”).”

(2) As can be seen from prayer clause [A] three separate proceedings have been challenged. The first proceeding is in relation to Application No.62 of 1997 pending before Joint Charity Commissioner at Vadodara. Though it is stated that the copy of the said application has been annexed at Annexure-G what is available in fact at Annexure-G is an application seeking interim relief. The learned advocate for the

petitioner has placed on record application Annexure-G which is an application moved under Section 41A of the Bombay Public Trusts Act, 1950 (the Act).

(3) On going through the said application it appears that respondent No.1 herein has moved the said application under Section 41A of the Act before the Joint Charity Commissioner praying for various directions as stated in the application. Section 41A of the Act stipulates that subject to the provisions of the Act, it will be open to the Charity Commissioner to issue directions to any trustee of a public trust or any person connected therewith to ensure that such trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust. The contention raised on behalf of the petitioner is that various statements made in the application moved under Section 41A of the Act relate to past disputes between the parties, more particularly in relation to change reports filed in 1994, and litigation ensuing on the basis of such change reports;

therefore, this application under Section 41A of the Act moved by respondent No.1 merely amounts to abuse of process of law for the purposes of harassing the petitioner.

(4) As to whether a change report is based on correct facts or not cannot be the scope of a petition under Article 226 of the Constitution. Apart from that as pointed out by the learned advocate for the petitioner, the litigation in relation to the change reports of 1994 stands concluded in favour of the petitioner vide order dated 30.01.2002 made by this Court in First Appeal No.6688 of 1999 and First Appeal No.6752 of 1999.

(5) In the circumstances, without entering into any further discussion as regards the merits of the contentions raised, suffice it to state that the issue requires to be decided by the authority before whom the application under Section 41A of the Act is pending adjudication considering the fact that the proceedings had been stayed by way of interim relief during pendency of the petition. Respondent authority is, therefore, directed to dispose of the said application in accordance with law.

(6) In so far as the second application is concerned, namely, Application No.1 of 1998 it was an application seeking transfer of Misc. Application No.62 of 1997 which was pending before the Joint Charity Commissioner, Vadodara to Ahmedabad. After hearing the learned advocate on behalf of the petitioner and the learned Additional Government Pleader, it is found that it is not necessary to record any opinion in light of the order made in relation to first application being Misc. Application No.62 of 1997.

(7) The third application being Application No. J/5/98, which is again stated to be pending before the Joint Charity Commissioner, Vadodara while in fact it is an application moved before the Charity Commissioner, Ahmedabad, is styled as an application under Section 78 of the Act. The said application seeks initiation of criminal proceedings against the petitioner herein. The application is stated to be under Section 78 of the Act. The said section merely states that the Charity Commissioner, and other officers, etc. appointed under the Act shall be deemed to be servants within

the meaning of Section 21 of the Indian Penal Code, 1860. Hence, it is a moot question as to whether any application as such could have been moved under Section 78 of the Act. In the circumstances, in so far as this third application is concerned, it is not necessary to record any finding and it will be open to the petitioner to point out to the authority, if necessary, as to whether any such application is required to be entertained or not.

(8) In light of what is stated hereinbefore, the petition stands disposed of in the aforesaid terms. RULE discharged. Interim relief stands vacated

Sd/-
[D.A. MEHTA, J]

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Bhavesh*